

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)) MDL No. 1917
ANTITRUST LITIGATION)
) Master Case
) No. CV-07-5944-SC

This Order Relates To:) Individual Case
) No. CV-14-2058-SC
)
ALL DIRECT PURCHASER ACTIONS) ORDER IN RE CLASS
) CERTIFICATION WITH RESPECT
) TO THE THOMSON AND
) MITSUBISHI DEFENDANTS
)
)
)
)

I. INTRODUCTION

Now before the Court is a motion by the Direct Purchaser Plaintiffs ("DPPs") for Class Certification with respect to the Defendants Thomson and Mitsubishi.¹ Thomson has settled and

¹ As used herein, "Thomson" refers to: Technicolor SA (f/k/a Thomson SA) ("Thomson SA") and Technicolor USA, Inc. (f/k/a Thomson Consumer Electronics, Inc.) ("Thomson Consumer"), and Technologies Displays Americas LLC (f/k/a Thomson Displays Americas LLC) ("TDA"). Allied with Thomson is Defendant Videocon Industries, Ltd. ("Videocon"). As used herein, "Mitsubishi" refers to: Mitsubishi Electric Corporation, Mitsubishi Electric US, Inc. (f/k/a Mitsubishi Electric & Electronics USA, Inc.), and Mitsubishi Electric Visual Solutions America, Inc. (f/k/a Mitsubishi Digital Electronics America, Inc.). Thomson, Videocon, and Mitsubishi are referred to collectively herein as "Defendants." The other co-

1 stipulated to class certification, pending hearing.² Accordingly,
 2 Mitsubishi is the only remaining Defendant. Mitsubishi opposes the
 3 motion.

4 The motion has been fully briefed,³ and the matter is
 5 appropriate for decision without oral argument per Civil Local Rule
 6 ///
 7 ///

8 conspirators, with most of whom the Direct Purchaser Plaintiffs
 9 ("DPPs") have already settled, are: (a) Chunghwa Picture Tubes,
 10 Ltd. and Chunghwa Picture Tubes (Malaysia) Sdn Bhd. (collectively
 11 "Chunghwa"); (b) Daewoo International Corporation, Daewoo
 12 Electronics Corporation f/k/a Daewoo Electronics Company, Ltd.,
 13 Orion Electric Company ("Orion"), and Daewoo-Orion SocieteAnonyme
 14 (collectively "Daewoo/Orion"); (c) Hitachi Ltd.; Hitachi Displays,
 15 Ltd., Hitachi America, Ltd., Hitachi Asia, Ltd., Hitachi Electronic
 16 Devices (USA), and Shenzhen SEG Hitachi Color Display Devices, Ltd.
 17 (collectively "Hitachi"); (d) Irico Group Corporation, Irico Group
 18 Electronics Co., Ltd., and Irico Display Devices Co., Ltd.
 19 (collectively "Irico"); (e) LG Electronics, Inc. ("LGE"), LG
 20 Electronics USA, Inc., and LG Electronics Taiwan Taipei Co., Ltd.
 21 (collectively "LG"); (f) LP Displays International, Ltd. ("LPD");
 22 (g) Panasonic Corporation, f/k/a Matsushita Electric Industrial
 23 Co., Ltd., Matsushita Electronic Corporation (Malaysia) Sdn Bhd.,
 24 and Panasonic Corporation of North America (collectively
 25 "Panasonic"); (h) Koninklijke Philips Electronics N.V., Philips
 26 Electronics Industries Ltd., Philips Electronics North America,
 27 Philips Consumer Electronics Co., Philips Electronics Industries
 28 (Taiwan), Ltd., and Philips dba Amazonia Industria Electronica
 Ltda. (collectively "Philips"); (i) Samsung Electronics America,
 29 Inc., Samsung SDI (Malaysia) Sdn Bhd., Samsung SDI Co., Ltd. f/k/a
 30 Samsung Display Device Company ("Samsung SDI" or "SDI"), Samsung
 31 SDI Mexico S.A. de C.V., Samsung SDI Brasil Ltda., Shenzhen Samsung
 32 SDI Co. Ltd., and Tianjin Samsung SDI Co., Ltd. (collectively
 33 "Samsung"); (j) Thai CRT Company, Ltd.; (k) Toshiba Corporation,
 34 Toshiba America, Inc., Toshiba America Consumer Products LLC,
 35 Toshiba America Consumer Products, Inc., Toshiba America Electronic
 36 Components, Inc., Toshiba America Information Systems, Inc., and
 37 Toshiba Display Devices (Thailand) Company, Ltd. (collectively
 38 "Toshiba"); (l) MT Picture Display Co., Ltd., f/k/a Matsushita
 39 Toshiba Picture Display Co., Ltd., ("MTPD"); and (m) Bejing-
 40 Matsushita Color CRT Company, Ltd. ("BMCC").

² See ECF No. 3562. The Court has granted preliminary approval of DPP's class action with the Thomson and TDA Defendants, pending a fairness hearing. Order of the Court dated June 12, 2015, ECF No. 3872.

³ ECF Nos. 2969 ("Mot."), 3109 ("DPP Ex."), 3709 ("Opp'n"), 3710 ("Def. Ex.") and 3820("Reply").

1 7-1(b). As explained below, the Court now GRANTS DPP's motion for
2 class certification with respect to Mitsubishi.⁴

3 **II. BACKGROUND**

4 The parties are familiar with this case's facts.⁵ Even so, a
5 brief summary follows.

6 This MDL concerns allegations of a worldwide conspiracy to fix
7 prices in the Cathode Ray Tube ("CRT") market. CRTs are discrete
8 products that can only be used as components in finished products
9 ("CRT Products" or "finished products"). CRTs are therefore
10 produced as Color Picture Tubes ("CPTs"), often used in
11 televisions, and Color Display Tubes ("CDTs"), often used for
12 computer monitors or small screen devices. The Named DPPs,⁶ the
13 proposed class representatives, purchased primarily finished
14 products⁷ containing CRTs, including CPTs and CDTs.

15 ⁴ This order is in accordance with several earlier orders in this
16 case. See, e.g., Order of the Court dated November 29, 2012, ECF
17 No. 1470, available at In re Cathode Ray Tube (CRT) Antitrust
18 Litig., 911 F. Supp. 2d 857, 869 (N.D. Cal. 2012); Order of the
19 Court dated September 24, ECF No. 1950, available at In re Cathode
20 Ray Tube (CRT) Antitrust Litig., No. C-07-5944-SC, 2013 U.S. Dist.
LEXIS 137946, 2013 WL 5391159 (N.D. Cal. Sept. 24, 2013) (adopting
ECF No. 1743, available at In re Cathode Ray Tube (CRT) Antitrust
Litig., No. JAMS REF. 1100054618, 2013 U.S. Dist. LEXIS 137944,
2013 WL 5428139 (N.D. Cal. June 20, 2013)).

21 ⁵ The Court further notes that many of the facts are well
22 summarized by the Court's previous rulings on summary judgment and
the discussion of the Interim Special Master ("ISM") as related to
23 the Indirect Purchaser Plaintiffs ("IPPs"). See Order of the Court
dated November 29, 2012, ECF No. 1470; Order of the Court dated
September 24, 2013, ECF No. 1950; Report and Recommendation
24 Regarding IPP's Motion for Class Certification, dated June 20,
2013, ECF No. 1742.

25 ⁶ Arch Electronics, Inc.; Crago, d/b/a Dash Computers, Inc.;
Meijer, Inc. and Meijer Distribution, Inc.; Nathan Muchnick, Inc.;
Princeton Display Technologies, Inc.; Radio & TV Equipment, Inc.;
26 Studio Spectrum, Inc.; and Wettstein and Sons, Inc., d/b/a
Wettstein's. Each has provided records of their purchase or
described them in evidence provided. See Reply at 8-9.

27 ⁷ The Court has previously considered and ruled upon a Motion for
Summary Judgment, holding that DPPs could proceed and recover as a
matter of law, even though they had apparently only purchased

1 DPPs now seek to certify a class of DPPs alleging harm,
 2 supported by the expert testimony of Dr. Jeffrey J. Leitzinger.⁸

3 **A. The Market**

4 An overview of the CRT market is helpful to understand DPPs'
 5 theory of the case. During the "Class Period," from March 1, 1995
 6 to November 25, 2007, CRTs were the dominant components of
 7 televisions and computer monitors.⁹ CRTs are very expensive and
 8 therefore are alleged to represent large portions of the prices of
 9 the finished products that contain them. CRTs are not uniform:
 10 they differ in size, deflection yoke frequencies, resolutions,
 11 shadow masks, phosphors, glass bulbs, electron guns, size, and
 12 assembly. The two types of CRTs at issue in this case -- CPTs and
 13 CDTs -- are also components of different finished products
 14 (televisions and computer monitors, respectively). See Opp'n at 2-
 15 3.

16 DPPs allege Defendants and their co-conspirators formed an
 17 international price-fixing cartel to restrict the prices of CRTs.
 18 DPPs maintain that Defendants carried out their conspiracy through
 19 frequent group and bilateral meetings over the course of twelve
 20

21 finished products, on the theory of the ownership-and-control
 22 exception to Royal Printing Co. v. Kimberly-Clark Corp., 621 F.2d
 23 323, 326 (9th Cir. 1980). C.f. Illinois Brick Co. v. Illinois, 431
 24 U.S. 720, 724 (1977). See the Court's Order, dated 29 November
 25 2012, ECF No. 1470. The Court has before and now again recognizes
 26 that this technically makes most of the plaintiffs at bar "indirect
 27 purchasers" despite the label "DPP." Some DPPs are alleged to have
 28 purchased directly and thus were not part of the earlier motion for
 summary judgment. See Reply at 10, n. 13. Even so, the Court will
 continue to designate all the plaintiffs as DPPs to differentiate
 them from the already certified class of IPPs.

⁸ Dr. Leitzinger's declaration in support of this motion, filed
 with the Court under seal, is summarized infra in relation to the
 Court's analysis of predominance under Rule 23(b)(3).

⁹ With the advent of Liquid Crystal Displays ("LCDs") and plasma
 displays, demand for CRTs dwindled.

1 years. The bilateral meetings were specifically arranged to
2 accommodate co-conspirators who avoided the group meetings due to
3 antitrust fears. The meetings were formalized and organized on
4 three levels: (1) quarterly top-level meetings attended by CEOs and
5 CRT business heads; (2) monthly management-level meetings attended
6 by Sales VPs, for example; and (3) monthly or semi-monthly working-
7 level meetings attended by lower-level employees, who prepared
8 materials and data for use in the management- and top-level
9 meetings. DPP Ex. 31 at 4-8 (labeled 52-57), 11-12 (labeled 73-
10 74). These meetings were supplemented by golf outings among key
11 executives. Id. at 13 (labeled 75).

12 The substance of all of these meetings concerned: (1) market
13 updates; (2) market-share analysis; (3) discussion of recent
14 customer negotiations; (4) analysis of global CRT supply and
15 demand; (5) discussion of members' compliance with earlier
16 agreements; and (6) "AOB," or "any other business" to include the
17 time and location of the next meeting. Specifically, Defendants
18 are alleged to have used these meetings to set prices, production
19 levels, and market shares. The DPPs have submitted substantial
20 documentary evidence, including meeting reports, e-mails,
21 memoranda, and testimony documenting these meetings, Defendants'
22 efforts to police the conspiracy, and Defendants' methods to
23 conceal the conspiracy.

24 **B. Investigations**

25 American and international governmental agencies began
26 investigating Defendants' practices in 2007. Investigating
27 agencies included: the U.S. Department of Justice ("DOJ"), the
28 European Commission ("EC"), the Japanese Fair Trade Commission

1 ("JFTC"), the Korean Fair Trade Commission ("KFTC"), the Canadian
2 Competition Bureau ("CCB") and the Czech Office for the Protection
3 of Competition ("COPC"). Specifically as part of the DOJ's
4 investigation, Defendant Chunghwa disclosed the conspiracy for
5 amnesty from criminal prosecution; SDI pled guilty to participation
6 in the CRT conspiracy; and six former SDI, Chunghwa, LGE, and LPD
7 executives have been indicted in association with the conspiracy.
8 DPP Exs. 5-8.

9 The DPPs now propose to certify a class defined as:

10 All persons and entities who, between March
11 1, 1995 and November 25, 2007, directly
12 purchased a CRT Product in the United States
13 from any Defendant or any subsidiary or
14 affiliate thereof, or any co-conspirator or
15 any subsidiary or affiliate thereof. Excluded
action.

17 **III. LEGAL STANDARD**

18 Class actions play an important role in the private
19 enforcement of antitrust actions. In re Citric Acid Antitrust
20 Litigation, No. C-95-2963 FMS, 1996 U.S. Dist. LEXIS 16409, *22,
21 1996 WL 655791 at *8 (N.D. Cal., October 2, 1996). Courts
22 therefore "resolve doubts in these actions in favor of certifying
23 the class." In re Rubber Chemicals Antitrust Litigation, 232
24 F.R.D. 346, 350 (N.D.Cal. 2005). "Courts have stressed that price-
25 fixing cases are appropriate for class certification because a
26 class-action lawsuit is the most fair and efficient means of
27 enforcing the law where antitrust violations have been continuous,
28 widespread, and detrimental to as yet unidentified consumers." In

1 re TFT-LCD (Flat Panel) Antitrust Litigation ("LCDs"), 267 F.R.D.
2 583, 592 (N.D. Cal. 2010), amended in part, 2011 U.S. Dist. LEXIS
3 84476, 2011 WL 3268649 (N.D. Cal. July 28, 2011) (internal
4 citations omitted).

5 Parties seeking class certification must, as "a threshold
6 matter, and apart from the explicit requirements of Rule 23(a),"
7 show an "identifiable and ascertainable class exists." Mazur v.
8 eBay Inc., 257 F.R.D. 563, 567 (N.D. Cal. 2009) (since class would
9 include non-harmed auction winners, this portion of the class
10 definition was imprecise and overbroad). Upon making this showing,
11 the Court then turns to Rule 23 of the Federal Rules of Civil
12 Procedure, which otherwise govern class actions. It is the
13 plaintiffs' burden to show that they have met the four requirements
14 of Rule 23(a) and at least one requirement of Rule 23(b). See Gen.
15 Tel. Co. v. Falcon, 457 U.S. 147, 158-61 (1982); Doniger v. Pac.
16 Nw. Bell, Inc., 546 F.2d 1304, 1308 (9th Cir. 1977); Zinser v.
17 Accufix Research Institute, Inc., 253 F.3d 1180, 1186 (9th Cir.
18 2001). Rule 23(a) states that a district court may certify a class
19 only if:

20 (1) the class is so numerous that joinder of
21 all members is impracticable; (2) there are
22 questions of law or fact common to the
23 class; (3) the claims or defenses of the
24 representative parties are typical of the
25 claims or defenses of the class; and (4) the
26 representative parties will fairly and
27 adequately protect the interests of the
28 class.

29 These four requirements are called (1) numerosity, (2) commonality,
30 (3) typicality, and (4) adequacy of representation. Mazza v. Am.
31 Honda Motor Co., Inc., 666 F.3d 581, 588 (9th Cir. 2012).

32 ///

1 DPPs assert that their class should be certified under Rule
2 23(b)(3), which requires the Court to find "that the questions of
3 law or fact common to class members predominate over any questions
4 affecting only individual members, and that a class action is
5 superior to other available methods for fairly and efficiently
6 adjudicating the controversy." This subsection must be satisfied
7 "through evidentiary proof." Comcast, 133 S. Ct. at 1431.
8 However, proving predominance does not require plaintiffs to prove
9 that every element of a claim is subject to classwide proof: they
10 need only show that common questions predominate over questions
11 affecting only individual class members. Amgen Inc. v. Ct.
12 Retirement Plans and Trust Funds, 133 S. Ct. 1184, 1196 (2013).

13 Further, the district court's class-certification analysis
14 "must be 'rigorous' and may 'entail some overlap with the merits of
15 the plaintiff's underlying claim.'" Id. at 1194 (2013) (quoting
16 Wal-Mart Stores, Inc. v. Dukes ("Dukes"), 131 S. Ct. 2541, 2551
17 (2011)). Even so, Rule 23 does not permit the court to "engage in
18 free-ranging merits inquiries at the certification stage." Id. at
19 1194-95. The court may consider merits questions only to the
20 extent that they are relevant to whether the Rule 23 prerequisites
21 are satisfied. Id. at 1195.

22 If the court finds that the moving party has met its burden of
23 proof, the court has broad discretion to certify the class. Zinser
24 v. Accufix Research Inst., Inc., 253 F.3d 1180, 1186, amended by
25 273 F.3d 1266 (9th Cir. 2001).

26 **IV. DISCUSSION**

27 The Court will briefly albeit "rigorous[ly]" consider
28 numerosity and typicality, each of which were pled by the

1 Plaintiffs and not directly challenged by Mitsubishi. See Amgen,
2 133 S. Ct. at 1194. The Court will then discuss in turn
3 ascertainability, commonality, adequacy of representation, and
4 predominance, each of which Mitsubishi challenges.

5 **A. Numerosity**

6 Rule 23(a)(1) requires that a class be so numerous that
7 joinder is impracticable. No precise number of potential class
8 members is required, and whether joinder would be impracticable
9 depends on the facts and circumstances of each case. Bates v.
10 United Parcel Service, 204 F.R.D. 440, 444 (N.D. Cal 2001); 1
11 Robert Newberg, Newberg on Class Actions, § 3:3 (4th Ed. 2002)
12 ("Where the exact size of the class is unknown but general
13 knowledge and common sense indicate that it is large, the
14 numerosity requirement is satisfied."). See also Ries v. Ariz.
15 Bevs. United States LLC, Hornell Brewing Co., 287 F.R.D. 523, 536
16 (N.D. Cal. 2012). Here, DPPs cite to a large number of members of
17 the proposed class. Mot. at 15. Mitsubishi does not challenge
18 their assertion. The facts and circumstances of this case also
19 suggest that there are a large number of potential plaintiffs who
20 may have bought a finished product containing a price-fixed CRT
21 from an entity owned or controlled by any allegedly conspiring
22 defendant (or co-conspirator).¹⁰ As there are numerous and
23 sufficient indicia that the potential class would be large, the
24 Court finds that DPPs have satisfied the numerosity requirement.
25 ///

26

¹⁰ The Court only considers Plaintiffs who are so situated or
27 similarly situated, as DPPs are proceeding in this case on the
theory of the ownership-and-control exception to Royal Printing Co.
28 v. Kimberly-Clark Corp., 621 F.2d 323, 326 (9th Cir. 1980). See
the Court's Order, dated 29 November 2012, ECF No. 1470.

1 **B. Typicality**

2 Rule 23(a)(3) requires that the claims or defenses of the
3 representative parties be typical of the claims or defenses of the
4 class. The class representatives must generally be part of the
5 class, and must possess the same interest and suffer the same
6 injury as the class members.

7 Typicality requirements are often satisfied "wherein it is
8 alleged that the defendants engaged in a common [price-fixing]
9 scheme relative to all members of the class." In re Catfish
10 Antitrust Litig., 826 F. Supp. 1019, 1035 (N.D. Miss. 1993). In
11 such cases, "there is a strong assumption that the claims of the
12 representative parties will be typical of the absent class
13 members." Id. This is true even where "the plaintiff followed
14 different purchasing procedures, purchased in different quantities
15 or at different prices, or purchased a different mix of products
16 than did the members of the class." In re TFT-LCD Antitrust Litig.
17 ("TFT-LCDs"), 267 F.R.D. 291, 300 (N.D. Cal. 2010) (quoting In re
18 Dynamic Random Access Memory Antitrust Litig. ("DRAM"), No. M 02-
19 1486 PHJ, 2006 U.S. Dist. LEXIS 39841, *30, 2006 WL 1530166, *4
20 (N.D. Cal. 2006)).

21 Accordingly, DPPs argue that claims of all other class members
22 stem from the same event, practice, or course of conduct, namely
23 the conspiracy. Mitsubishi does not directly challenge this
24 prong.¹¹ Yet even had Mitsubishi directly challenged typicality,
25 the pervasive nature and common impact of Defendants' alleged
26 price-fixing scheme supports that the claims made by the DPPs "stem
27

28

¹¹ Insofar as arguments Mitsubishi makes that might be relevant are
made within the context of other prongs, they are addressed infra.

1 from the same event, practice, or course of conduct that forms the
2 basis of the claims of the class and are based on the same legal or
3 remedial theory." In re Citric Acid, 1996 U.S. Dist. LEXIS 16409
4 at *8-9, 1996 WL 655791 at *3. Therefore, typicality is satisfied.

5 **C. Ascertainability**

6 Mitsubishi argues that the proposed class definition is not
7 ascertainable because, for various reasons, the scope of language
8 in the proposed class is overbroad.

9 "As a threshold matter, and apart from the explicit
10 requirements of Rule 23(a), the party seeking class certification
11 must demonstrate that an identifiable and ascertainable class
12 exists." Mazur v. eBay, Inc., 257 F.R.D. 563, 567 (N.D. Cal.
13 2009). "A class definition should be precise, objective, and
14 presently ascertainable." Id. The class definition must be
15 sufficiently definite such that its members can be ascertained by
16 reference to objective criteria. Whiteway v. FedEx Kinko's Office
17 & Print Servs., Inc., No. C 05-2320 SBA, 2006 U.S. Dist. LEXIS
18 69193, *10, 2006 WL 2642528, *3 (N.D. Cal. Sept. 14, 2006). "[A]
19 class will be found to exist if the description of the class is
20 definite enough so that it is administratively feasible for the
21 court to ascertain whether an individual is a member." O'Conner v.
22 Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998).

23 Here, the Court finds that the class can be ascertained by
24 reference to objective criteria. The class requires a class
25 member: (a) to be harmed within a specific date range; (b) to have
26 made their purchase within the United States; (c) to have purchased
27 a CRT Product; (d) to have made the purchase from a discrete seller
28 (namely a Defendant in this action or a subsidiary or affiliate

1 thereof or any co-conspirator or any subsidiary or affiliate
 2 thereof); and finally (e) not be among those specifically excluded.

3 Mitsubishi disagrees, making three arguments directly
 4 attacking ascertainability. The Court addresses each in turn.

5 *i. The Terms "Defendant" and "Affiliate"*

6 Mitsubishi first contends that the DPPs' proposed class is not
 7 ascertainable because the class does not adequately distinguish
 8 between those who would be within the class from those who would be
 9 excluded and because it includes those who lack standing.¹² Put
 10 more artfully, Mitsubishi argues the class is overbroad in scope in
 11 light of the Court's earlier ruling.

12 The Court is not convinced. Plaintiffs' definition is not out
 13 of line with previously certified classes in this action. See ECF
 14 Nos. 1179, 1412, 1333, 1508, 1441, 1621, 1603, 1791. While the
 15 scope of the class as worded may seem broad at first blush, there
 16 is little danger of being unable to ascertain whether one is a
 17 member of the class or accidentally including somebody without
 18 standing. DPPs limit the scope of the class to those who, within a
 19 specific date and location, purchased from a defined group a "CRT
 20 Product."¹³ Thus DPPs here are those who would claim to have
 21 bought finished products directly from Defendants, co-conspirators,
 22 or entities owned or controlled by them, which comprises those whom
 23 the Court has already stated would have standing in its earlier
 24 ///

25 ¹² This argument was offered as part of the "threshold" argument at
 26 Opp'n 7-9, but is in line with and thus addressed here, as part of
 Mitsubishi's first argument.

27 ¹³ But c.f. Sanders v. Apple Inc., 672 F. Supp. 2d 978, 991 (class
 28 not ascertainable where the class proposed contained no limits on
 class membership accounting for purchase of the owned product or
 owners being deceived by advertisements).

1 ruling.¹⁴ Potential class members can determine if they fall
2 within the class by review of their sales records and invoices.
3 See Reply at 4, 4 n. 7. Thus class members will easily be able to
4 answer the question, "Did you buy a 'CRT Product' from a Defendant
5 or an alleged co-conspirator or known subsidiary thereof?" All
6 harm was also in the past, obviating concerns about whether
7 somebody who receives notice would know if they were harmed (and
8 thus be able to intentionally decide whether or not to opt out of
9 the class).¹⁵ The class as drafted therefore allows for people to
10 determine whether they are class members and have standing in line
11 with the exception to Illinois Brick Co. v. Illinois, 431 U.S. 720,
12 97 (1977) this court has found to apply per Royal Printing Co. v.
13 Kimberly-Clark Corp., 621 F.2d 323, 326 (9th Cir. 1980). See Order
14 of the Court dated November 29, 2012, ECF No. 1470. Insofar as
15 Mitsubishi is merely inviting the Court to readdress its earlier
16 order, the Court declines.

17 Mitsubishi next contends that the term "defendant" in the
18 proposed class definition is over-inclusive and not objectively
19 ascertainable because it would incorporate CRT Product sellers from
20 a "defendant" without requiring any showing that the "defendant" is
21 a conspiring seller or an entity "owned or controlled" by a
22 ///

23

¹⁴ But c.f. Bishop v. Saab Automobile A.B., No. CV-95-0721 JGD
24 (JRx), 1996 LEXIS 22890, *14, 1996 WL 33150020, *5 (C.D. Cal. 1996)
25 (where a "vast majority of the purported members lack[ed] standing"
26 having either not suffered any harm or being directly barred from
27 suit by law).

28 ¹⁵ But c.f. Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234
29 (9th Cir. Cal. 1996) ("serious due process concerns" about
30 providing adequate notice to allow people to opt out where there
31 was no way for drug users to know whether they were in the future
32 going to experience sufficient actual injury to become part of the
33 class).

1 conspiring seller. Opp'n at 9-11. Mitsubishi expresses special
2 concern that some Defendants who sold finished products were not
3 even in the CRT business and therefore could not have been
4 "conspiring sellers." Opp'n at 9-10.

5 The Court is still not convinced. The Court has not
6 prohibited finished product sellers from being defendants in this
7 action.¹⁶ See Order of the Court dated November 29, 2012, ECF No.
8 1470. That some finished product sellers may, by stipulation, have
9 not been in the CRT business does not mean they were not owned or
10 controlled by a member of the CRT business. Thus they may well be
11 a proper "defendant." If they were not a proper defendant, then
12 they could easily seek relief pursuant to the Court's earlier
13 ruling on summary judgment -- which seems to be what Mitsubishi is
14 really challenging. However, given the sheer scope of this
15 conspiracy it seems that the concern raised here will be the highly
16 rare exception rather than the rule. Even if some individuals are
17 thus able to join the class and then are later determined to not
18 have valid claims against a proper defendant, this does not
19 preclude class certification. Kohen v. Pac. Inv. Mgmt. Co., 571
20 F.3d 672, 677 (7th Cir. 2009) ("a class will often include persons
21 who have not been injured by the defendant's conduct . . . [but]
22 [s]uch a possibility or indeed inevitability does not preclude
23 class certification"). As the "general outlines of the membership
24 of the class are determinable at the outset of the litigation," the
25 class can be ascertained. O'Connor, 184 F.R.D. at 319.¹⁷ Whether

26 _____
27 ¹⁶ Indeed, DPPs expressly note the existence of at least one named
plaintiff (Princeton) who purchased CRTs directly from
conspirators. See Reply at 10 n. 13.

28 ¹⁷ Mitsubishi cites Mazur to suggest that a class is not
ascertainable when the definition is so imprecise that (a)

1 the DPPs can prove at trial that the alleged Defendants were either
2 conspiring sellers of price-fixed CRTs or owned or controlled by
3 those sellers per Royal Printing is a question not properly
4 resolved on a motion for class certification. Insofar as
5 Mitsubishi is yet again inviting the Court to readdress its earlier
6 order, the Court again declines.

7 Mitsubishi's argument as to the term "affiliate" being over-
8 inclusive is similar, slightly more compelling, but still easily
9 overcome. Mitsubishi notes that "affiliate" could be used to sweep
10 within the proposed class parties that lack standing. While the
11 Court holds that much of the rationale above still applies, the
12 Court does appreciate that the limits innately present in the term
13 "defendant" do not similarly limit the term "affiliate." To allay
14 any potential concern for related ascertainability issues, the
15 Court hereby ORDERS DPPs to specifically identify the
16 "affiliate[s]" in the class definition (and class notice) to enable
17 ///
18 ///

19
20 individuals might not be able to determine if they are eligible
21 members of the class or (b) when the class includes members who are
22 unharmed or lack standing under the law. See Mazur, 257 F.R.D.
23 567-8; Opp'n at 8. However, Mazur makes clear that "the class need
24 not be so ascertainable that every potential member can be
25 identified at the commencement of the action." Mazur, 257 F.R.D.
26 at 567 citing O'Connor, 184 F.R.D. 311, 319 (C.D. Cal 1998). In
27 Mazur, the court found the first class of people who actually won
28 an online auction was objective and likely readily ascertainable by
records. Mazur, 257 F.R.D. at 567. Mazur found difficulties with
that same group and another subclass insofar as there was a wide
swath of potential class members who would be unharmed, statutorily
barred, or who could not discern from records whether they were
part of the class. Id. Specifically, such people were not yet
aggrieved. Here, as evidence supports so much of the market being
controlled or impacted by a single CRT conspiracy, there is
unlikely to be a large group who is not yet harmed or whose claims
would be barred (except per the Court's order on summary judgment).

1 the parties and class members to better determine who is in the
 2 class.¹⁸

3 **ii. Overlap Between the IPP and DPP Classes**

4 Mitsubishi also contends that the proposed class overlaps with
 5 the now-approved IPP class. Opp'n at 11-12. The IPP class is
 6 defined to include "All persons and entities . . . who, from March
 7 1, 1995 to November 25, 2007 . . . purchased Cathode Ray Tubes
 8 incorporated in televisions and monitors . . . indirectly from any
 9 defendant or subsidiary thereof, or any named affiliate or any
 10 named co-conspirator, for their own use and not for resale" ECF No. 1742. Mitsubishi argues this definition encompasses at least some of the DPPs' proposed class members because said class members also indirectly bought CRTs incorporated in televisions and monitors. Thus purchasers who receive both class notices would theoretically not be able to determine whether they belong in one class or the other.

17 The Court finds that the classes do not overlap. The IPP
 18 class is expressly limited to end-users who not only purchased the
 19 relevant products "indirectly," as opposed to "directly," but also
 20 who purchased for their own use and not for resale.¹⁹ While the
 21

22 ¹⁸ In making this order, the Court notes that DPPs specifically
 23 volunteered to adhere to this approach which has been previously
 24 applied in TFT-LCDs, 267 F.R.D. at 299-300. Reply at 5 n.8.

25 ¹⁹ In Loeb Indus. v. Sumitomo Corp. (In re Copper Antitrust Litig.), 196 F.R.D. 348, 358 (W.D. Wis. 2000), the class at issue
 26 did not describe "persons who bought Product X at any time between
 27 such and such dates." Here, that is very much the type of
 28 description this court evaluates. Other cases cited by Mitsubishi
 demonstrates it would not be administratively feasible for the
 court to ascertain whether an individual is a class member" do not
 seem to directly discuss overlapping classes or else are not
 binding authority for the Court. See Opp'n at 11-12 (internal
 citations omitted).

1 Court understands the concern that an indirect purchaser of
2 finished products not for resale might think he or she could be
3 part of both classes, the Court finds the concern is ultimately
4 invalid here. For the concern to be valid, it would necessitate a
5 purchaser receive both notices. In such a case,²⁰ the difference
6 would be clear on the face of the notice(s). The Court thus finds
7 that there is no real risk of a notice recipient not reasonably
8 being able to determine its class eligibility.

9 **iii. Standing**

10 Mitsubishi argues that the Court's ruling on summary judgment
11 does not constitute a finding that class representatives actually
12 have standing. It further argues that a showing of class
13 ascertainability must be made prior to class certification. And
14 finally, Mitsubishi asserts that the present showing fails to
15 exclude potential class members who lack standing. Opp'n at 12-13.

16 The Court agrees it has not found by its previous ruling that
17 standing exists as to every possible defendant, merely that there
18 continues to be a material question of fact making summary judgment
19 inappropriate at that time as against the plaintiffs included in
20 that motion. While the Court must make a "rigorous" inquiry into
21 class certification, the Court is not to enter the merits of this
22 case more than is necessary to determine if certification of the
23 class is appropriate. Amgen, 133 S. Ct. at 1194-95. Here, the
24 Court finds there is ample evidence that could be used at trial to
25 support the limited theory of standing permitted to DPPs. The mere
26 "possibility or indeed inevitability" of including a member in the

27

28 ²⁰ Per DPP Ex. 179, such a case is unlikely. Mitsubishi also does not cite a likely example where this might happen, let alone happen to an unsophisticated party likely to be confused.

1 class who ultimately, at the end of trial, turns out to lack
2 standing does not prevent class certification. Kohen, 571 F.3d at
3 677. Where, as here, there are "general outlines of the membership
4 of the class" which are "determinable at the outset of the
5 litigation, a class will be deemed to exist." O'Connor, 184 F.R.D.
6 at 319.²¹ Accordingly, the Court rejects Mitsubishi's standing
7 arguments. Therefore, the class as proposed by DPPs is found to be
8 ascertainable (subject to the Court's order of specifically
9 identifying "affiliates").

10 **D. Commonality**

11 Mitsubishi argues both that there are no common questions that
12 relate to the existence of the alleged conspiracy, and second that
13 there are no common questions relating to the existence of
14 classwide impact or damages. Opp'n at 13-16. For the reasons set
15 forth below, the Court rejects both these arguments and finds that
16 commonality is satisfied.

17 Rule 23(a)(2) requires that there be "questions of law or fact
18 common to the class." "Commonality requires the plaintiff to
19 demonstrate that the class members have suffered the same injury.
20 This does not mean merely that they have all suffered a violation
21 of the same provision of law." Dukes, 131 S. Ct. at 2551 (internal
22 citations and quotation marks omitted). Instead, plaintiffs'
23 "claims must depend upon a common contention . . . of such a nature
24 that it is capable of classwide resolution -- which means that
25 determination of its truth or falsity will resolve an issue that is

26 ²¹ The Court agrees that a showing must be made before
27 certification that the class is ascertainable. See In re Paxil
28 Litig., 212 F.R.D. 539, 545 (C.D. Cal. 2003) (cited by Mitsubishi
in Opp'n at 12-13). However, for the reasons set forth above, the
Court finds that here that requirement has been satisfied.

1 central to the validity of each one of the claims in one stroke."
2 Id. Thus, "[w]hat matters to class certification . . . is not the
3 raising of common 'questions' -- even in droves -- but, rather the
4 capacity of a classwide proceeding to generate common answers apt
5 to drive the resolution of the litigation. Dissimilarities within
6 the proposed class are what have the potential to impede the
7 generation of common answers." Id. (internal quotation omitted).

8 Courts in this judicial district have been consistent: "where
9 an antitrust conspiracy has been alleged, courts have consistently
10 held that the very nature of a conspiracy antitrust action compels
11 a finding that common questions of law and fact exist." DRAM, 2006
12 U.S. Dist. LEXIS 39841 at *29, 2006 WL 1530166 at *3. DPPs cite
13 similar authorities, and assert additional common questions include
14 (1) whether Defendants' conduct caused the prices of CRTs to be set
15 at supra-competitive levels, (2) the measure of classwide damages,
16 and (3) whether Defendants engaged in affirmative acts to conceal
17 the conspiracy. Mot. at 16.

18 Mitsubishi opposes these contentions. It argues, first, that
19 there are no common questions relating to the existence of the
20 alleged conspiracy because CPTs and CDTs were discussed in separate
21 meetings for most of the twelve-year class period, which would
22 require the two types of CRTs to be analyzed separately. Opp'n at
23 14-15. According to Mitsubishi, that most law enforcement agencies
24 have analyzed the two CRT types separately for criminal liability,
25 that Dr. Leitzinger (DPP's expert) often treats the two differently
26 even in this case, and that the evidence generally supports
27 different answers at different times with respect to the different
28 CRT products shows that the DPPs' allegations of conspiracy lack

1 common evidence. Id. Second, Mitsubishi contends that the
 2 difference in market factors between CPTs and CDTs belies DPPs'
 3 argument that the putative class shares common questions of impact
 4 or damages. Id. at 15-16. On this point, Mitsubishi points to the
 5 fact that Dr. Leitzinger's quantitative studies evaluate CPTs and
 6 CDTs separately and did not show that prices of CDTs and CPTs were
 7 linked. Mitsubishi therefore concludes that Plaintiffs fail to
 8 show common questions capable of producing common answers for the
 9 entire class in "one stroke" with respect to the alleged
 10 conspiracy's impact on CPTs and CDTs. Id. at 16 (citing Dukes, 131
 11 S. Ct. at 2551).

12 The Court finds that the DPPs satisfy the commonality
 13 requirement. Per Dukes, the DPPs' antitrust claim depends on a
 14 common contention that Defendants' alleged price-fixing conspiracy
 15 increased the prices of all CRT products -- including CPTs and
 16 CDTs.²² Mitsubishi concedes that there were joint meetings prior
 17 to 2000. See Opp'n at 14.²³ DPPs' evidence suggests that even

18 ²² Mitsubishi cites Ellis v. Costco Wholesale Corp., 657 F.3d 970,
 19 981 (9th Cir. 2011), quoting Dukes, 131 S. Ct. at 2552, to
 20 emphasize the need of common questions to answer the underlying
 21 question of why something happened rather than merely whether a
 22 group was commonly harmed. The Court finds the common evidence
 23 here does precisely that, answering not only whether Plaintiffs
 24 were harmed but also the critical question of why they were harmed
 25 with a common answer -- namely, a massive conspiracy by Defendants
 whose reach was so wide it included multiple (or else all) facets
 of the CRT market to such a substantial degree that differences
 which may exist between one market sub-facet and another appear
 inconsequential in context. See Ellis, 657 F.3d at 981 ("all
 questions of fact and law need not be common to satisfy the
 rule") (internal citations omitted).

26 ²³ Mitsubishi alleges it did not attend any of the joint or
 27 separate meetings. Opp'n at 14. However, Exhibits submitted under
 seal by DPPs and Mitsubishi suggest there may be factual dispute as
 to that point. See, e.g., Def. Ex. 1 at 14, 16, 19, 24; Def. Ex. 6
 at 12; Expert Report of Dr. Leitzinger at 19; DPP Ex. 2 at 2
 (labeled 60); DPP Ex. 28 at 39; DPP Ex. 38 at 2. The Court does
 28 not opine upon or seek to resolve that dispute here, but the

1 after the CPT and CDT meetings were separated, they involved mostly
2 the same companies and were attended by mostly the same people.
3 Mot. at 7. DPPs even show that certain size CDTs and CPTs were
4 built in the same factories using processes allowing Defendants to
5 change production from one to another. See DPP Ex. 67 at 4
6 (labeled 114). The DPPs' documentary evidence and their economic
7 analyses also indicate that CDTs and CRTs are not so dissimilar as
8 to impede common resolution of the DPPs' claims, even if different
9 meetings and products were involved. See Mot. at 7. Accordingly,
10 the Court is not persuaded as to Mitsubishi's first argument that
11 the differences between CDTs and CPTs are so great that they cannot
12 be included in one class.

13 Insofar as Mitsubishi's arguments go specifically toward
14 commonality (vice predominance), it is clear to the Court that
15 there are common questions of law and fact here which are
16 appropriate for resolution at trial. Resolving these factual
17 matters at this stage would be an intrusion into the merits beyond
18 the scope of an inquiry into class certification. There may be
19 some dissimilarities within the class, but based on the DPPs'
20 theories and evidence, they have provided a common way to account
21 for the factual and legal differences raised here. See Dukes, 131
22 S. Ct. at 2551; see also Meyer v. Portfolio Recovery Assocs., LLC,
23 707 F.3d 1036, 1041 (9th Cir. 2012) ("All questions of fact and law
24 need not be common to satisfy the [commonality requirement]"
25 (citations and quotation marks omitted) (citing Hanlon v. Chrysler
26 Corp., 150 F.3d 1011, 1019 (9th Cir. 2008)).

27
28 existence of the dispute underscores that common facts about the
conspiracy may answer questions common to both those who purchased
any type of CRT Product -- CPTs and CDTs.

1 Accordingly, the Court finds that DPPs satisfy commonality per
2 Rule 23(a)(2). The Court discusses predominance further below.

3 **E. Adequacy of Representation**

4 Rule 23(a)(4) requires that the Named DPPs (1) have no
5 interests that are antagonistic to or in conflict with the
6 interests of the class; and (2) be represented by counsel able to
7 vigorously prosecute their interests. In re Static Random Access
8 (SRAM) Antitrust Litig., No. C 07-01819-CW, 2008 U.S. Dist. LEXIS
9 107523, *40, 2008 WL 4447592, *4 (N.D. Cal. Sept. 29, 2008) (citing
10 Staton v. Boeing Co., 327 F.3d 938, 957-58 (9th Cir. 2003)). In
11 this case, the Court finds Named DPPs' interests do not conflict
12 with those of the absent class members, and counsel for the
13 putative class is skilled and experienced. See Mot. at 17-18.

14 Mitsubishi argues that the class representatives have failed
15 to make a showing of standing under the limited theory of standing
16 left to them pursuant to Illinois Brick, Royal Printing, and this
17 Court's earlier ruling. Specifically, Mitsubishi argues that "DPPs
18 cannot satisfy their burden for establishing adequacy by merely
19 identifying evidence from which the Court could infer the possible
20 existence of standing. DPPs should be required to satisfy that
21 burden prior to class certification." Opp'n at 22. Mitsubishi
22 also seems to suggest allegations of fact are insufficient to show
23 standing. Opp'n at 23-24.

24 The Court has addressed standing arguments several times
25 above, and remains unpersuaded by this variant. A district court
26 may address standing before it addresses the issue of class
27 certification. Easter v. Am. West Fin., 381 F.3d 948, 962 (9th
28 Cir. 2004); In re Ditropan XL Antitrust Litig., 529 F. Supp. 2d

1 1098, 1107 (N.D. Cal. 2007).²⁴ Mitsubishi cites Lierboe for the
 2 proposition that "class representatives must have standing to bring
 3 all claims held by the putative class to which they belong and
 4 which they purpose to represent." Opp'n at 21. In Lierboe, the
 5 appellate court vacated class certification where the sole
 6 plaintiff in that class action suit was found via intervening
 7 action by the State Supreme Court to have no legally cognizable
 8 claim and thus lacked standing. Lierboe v. State Farm Mut. Auto.
 9 Ins. Co., 350 F.3d 1018, 1020-1022 (9th Cir. 2003). Mitsubishi is
 10 thus in effect urging the Court to consider that "standing is the
 11 threshold issue in any suit. If the individual plaintiff lacks
 12 standing, the court need never reach the class action issue." Id.
 13 at 1022, citing 3 Herbert B. Newberg on Class Actions § 3:19, at
 14 400 (4th ed. 2002). However, this case does not involve a single
 15 plaintiff who has been found to lack standing, but rather a price-
 16 fixing scheme where the Court has already recognized that
 17 cognizable legal theories of standing may exist for DPPs to a
 18 degree sufficient to deny summary judgment.²⁵ Accordingly, Lierboe
 19 does not require the Court to dismiss this motion.

20 ///

21 ²⁴ DPPs urge that, properly understood, these cases provide that
 22 the Court may reach standing prior to class certification but do
 23 not obligate such a review. Reply at 10 n. 14. The Court
 24 understands the distinction but declines to opine on it, as the
 25 distinction would not make any difference to the outcome here.

26 ²⁵ The Court is not the first to note such distinctions. See,
 27 e.g., In re Static Random Access Memory Antitrust Litig., No. 07-
 md-01819 CW, 2010 U.S. Dist. LEXIS 141670, *57, 2010 WL 5071694,
 *10 (N.D. Cal. 2010) (distinguishing Lierboe in a price-fixing case
 where, if proven, alleged facts would constitute a violation of the
 Sherman Act); Nat'l Fed'n of the Blind v. Target Corp., No. C 06-
 01802 MHP, 2008 U.S. Dist. LEXIS 84390, *4, 2008 WL 54377, *1 (N.D.
 Cal. 2008) (finding Lierboe "inapposite" where a party established
 legal standing to assert an ADA claim but failed to survive summary
 judgment on the merits).

Even within the theory permitted by the Court's order on summary judgment, DPPs have met their standing burden. Mitsubishi states that standing in this case requires a showing that DPPs "purchased finished products directly from an entity owned or controlled by Defendants or an alleged co-conspirator." Opp'n at 22. "Standing is satisfied if at least one named plaintiff meets the requirements." Stearns v. Ticketmaster Corp., 655 F.3d 1013, 1021 (9th Cir. 2011). DPPs extensively cite exhibits wherein multiple named Plaintiffs allege purchasing CRTs or finished products from an entity owned or controlled by or else directly from an alleged co-conspirator. See Reply at 8-9; 10 n. 13. The Court therefore finds DPPs meet their burden on standing sufficiently to certify the class.²⁶

Mitsubishi further argues that DPP's pleadings do not fully support standing. Mitsubishi cites that DPPs are alleged to have purchased "one or more CRTs directly from one of the Defendants or Co-Conspirators and/or their subsidiaries" without naming a specific DPP who purchase a finished product. Opp'n at 23. Absent such a showing, Mitsubishi argues that DPPs lack standing.

The Court also rejects this argument. In response to Mitsubishi's concern, DPPs expressly cite a named Plaintiff who

²⁶ The Court agrees with DPPs that Preap v. Johnson, 303 F.R.D. 566, 584 (N.D. Cal. 2014) does not state a legal standard for evaluating standing, merely the standard for evaluating Rule 23 categories. C.f. Reply at 10; contra Opp'n at 22-23. The Court suspects that the proper standard is a preponderance of the evidence but does not resolve the question here because the Court is satisfied that a preponderance of the evidence shows there would be standing at trial based on the limited evidence submitted to the Court. The Court also does not reach the question of whether a specific claim of standing as to a particular named DPP would survive if evaluated for summary judgment on the merits or presented trial.

1 directly purchased a CRT from a "Co-Conspirator[] and/or their
2 subsidiar[y]." See Reply at 10 n. 13. DPPs also cite where, in a
3 section other than "Parties," they allege purchase of finished
4 products. See Reply at 11. Per Stearns, only a single Plaintiff
5 needs to meet standing requirements. 655 F.3d at 1021.
6 Accordingly, the crux of Mitsubishi's argument has been rebutted.

7 Embedded in this argument, Mitsubishi also seeks to assert
8 that the Court cannot expand the class definition to accommodate
9 the owned-or-controlled theory without an amended complaint.
10 Authorities within this judicial district diverge on whether the
11 Court is actually bound to class definitions provided in the
12 complaint. Compare Costelo v. Chertoff, 258 F.R.D. 600, 604-05
13 (C.D. Cal. 2009)(the Court is bound by the class definitions
14 provided in the complaint), with In re Conseco Life Ins. Co.
15 Lifetrend Ins. Sales & Mktg. Litig., 270 F.R.D. 521, 530 (N.D. Cal.
16 2010) (allowing Plaintiffs to narrow their breach of contract
17 theory via class certification motion based on factual developments
18 that have occurred since the filing of the complaint). Mitsubishi
19 cites as persuasive authority Savanna Group, Inc. v. Trynex, Inc.,
20 No. 10-cv-7995, 2013 U.S. Dist. LEXIS 1277, *7-10, 2013 WL 66181,
21 *2-3 (N.D. Ill. 2013). There, in considering that courts will
22 "typically, though not invariably" hold a Plaintiff to the
23 definition in the complaint, the Court recognized that "a motion
24 for class certification does not operate as a de facto amendment of
25 a party's complaint [but that] d[oes] not suggest that differing
26 class definitions preclude[] certification." 2013 U.S. Dist. LEXIS
27 1277 at *9, 2013 WL 66181 at *3 (internal citations omitted).
28 Savanna also considered that Rule 23 contemplated amendment of a

1 class certification order prior to judgment and recognized that
2 Defendants were not prejudiced by the timing where they had been
3 given ample chance to respond to the updated definition. 2013 U.S.
4 Dist. LEXIS 1277 at *9-10, 2013 WL 66181 at *3. Accordingly, the
5 change of class definition did "not forestall the Court's class
6 certification inquiry." 2013 U.S. Dist. LEXIS 1277 at *10, 2013 WL
7 66181 at *3. Here, the Court recognizes that the parties have all
8 had ample time to consider and respond to the class definition as
9 proposed, that amendments (if any) to the complaint would only be
10 necessary to conform the complaint to the results of litigation in
11 this same case (e.g., the Court's ruling on summary judgment), and
12 that if an amendment is actually necessary²⁷ it can be made prior
13 to judgment but after the class is certified. Accordingly, this
14 issue does not forestall the Court's class certification inquiry.

15 Therefore, the Court finds DPPs have satisfied adequacy.

16 **F. Predominance under Rule 23(b)(3)**

17 Rule 23(b)(3) requires that "questions of law or fact common
18 to class members predominate over any questions affecting only
19 individual members" and that class action is superior to other
20 available methods for fair and efficient adjudication. See Amchem
21 Prods. Inc. v. Windsor, 521 U.S. 591, 615 (1997). In determining
22 whether the predominance requirement is satisfied, the court must
23 identify the case's issues and determine which are subject to
24 common proof and which are subject to individualized proof. See

25
26 ²⁷ The Court does not opine on this, though encourages DPPs to
27 review this matter to determine if an amendment of the complaint
will be necessary. If so, the Court grants leave to amend the
complaint within 30 days of this order for the single, limited
28 purpose of conforming its definition(s) of parties with the
description of the class as certified in this order.

1 LCDs, 267 F.R.D. at 600. "When common questions present a
2 significant aspect of the case and they can be resolved for all
3 members of the class in a single adjudication, there is clear
4 justification for handling the dispute on a representative rather
5 than on an individual basis." Hanlon v. Chrysler Corp., 150 F.3d
6 1011, 1022 (9th Cir. 1998).

7 In "price-fixing cases, courts repeatedly have held that the
8 existence of the conspiracy is the predominant issue and warrants
9 certification even where significant individual issues are
10 present." Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives &
11 Composites, Inc. ("Newport"), 209 F.R.D. 159, 167 (C.D. Cal. 2002).
12 The issue of whether questions of law or fact common to class
13 members predominate begins with the elements of the underlying
14 cause of action. Erica P. John Fund, Inc. v. Halliburton Co., 131
15 S. Ct. 2179, 2184 (2011). For antitrust cases, this requires: (1)
16 a conspiracy to fix prices in violation of the antitrust laws
17 ("conspiracy"); (2) an antitrust injury -- i.e., the impact of the
18 defendants' unlawful activity ("impact"); and (3) damages caused by
19 the antitrust violations ("damages"). LCDs, 267 F.R.D. at 600.

20 DPPs argue that common questions predominate because they can
21 establish that for each of the three prongs (conspiracy, impact,
22 and damages), generalized proof is applicable to the class as a
23 whole. Mot. at 19. DPPs present Dr. Leitzinger's expert report
24 (submitted under seal) to support their contention that they can
25 prove antitrust impact and damages on a classwide basis.
26 Mitsubishi does not directly oppose the conspiracy prong, but does
27 dispute the impact and damages prongs. Mitsubishi also did not
28 submit an expert report in response to Dr. Leitzinger, though they

1 did include another expert report (submitted under seal) responsive
2 to the opinions of other experts on matters related to this case.

3 The Court will review Dr. Leitzinger's report in depth
4 (altering the order to better align with issues the Court is asked
5 to address), then address each of the three prongs in turn, and
6 finally conclude with a brief discussion of superiority.

7 **i. Dr. Leitzinger's Report**

8 Dr. Leitzinger is an economist and a managing director at Econ
9 One Research, Inc., an economic research and consulting firm. ECF
10 No. 2968-4 (Expert Report of Jeffrey J. Leitzinger ("Leitzinger
11 Report")) ¶ 1.²⁸ He has a Ph.D. in economics from the University
12 of California at Los Angeles, and for thirty-four years he has
13 worked extensively on market analysis and the assessment of
14 allegations of anticompetitive conduct, including a number of
15 antitrust conspiracy cases. Id. In this case, Dr. Leitzinger
16 reviewed evidence of the alleged conspiracy and then formed an
17 opinion that there is evidence common to members of the proposed
18 class that is sufficient to prove widespread impact. Id. ¶ 6.

19 This evidence involves:

- 20 (1) The broad extent of communication and cooperative
21 activities within the alleged conspiracy;
22 (2) Activities that would have assisted the alleged
23 conspiracy in constraining output of CRTs;
24 (3) The alleged conspiracy's control over the vast
25 majority of sales;
26 (4) Regression analysis showing prices of CRTs to be
largely determined by factors that are common to
Class Members;

27 ²⁸ The DPPs filed two earlier reports from Dr. Leitzinger in this
28 case, ECF Nos. 1825-1 and 2208-8, both related to DPP class
certification. The Court considers only the expert reports filed
in this motion, except as clearly incorporated by motion argument.

- 1 (5) Jointly determined "Target Prices" for CRTs
2 representing the vast majority of total sales;
- 3 (6) Structural elements in CRT pricing that tended to
4 link prices for CRTs of different types and
5 sizes;
- 6 (7) Regression analysis showing that "Target Prices"
7 established thought the alleged conspiracy had a
8 demonstrable effect on actual prices paid; and
- 9 (8) The existence of other market characteristics
10 which would be expected as an economic matter to
11 cause the effects of conspiratorial behavior to
12 be felt broadly across customers.

13 Id.

14 a. Background

15 Before beginning any statistical analysis, Dr. Leitzinger
16 first reviewed the background of CRTs, including their various uses
17 over the years and technical descriptions of CRT products. Id. ¶
18 8-10. Dr. Leitzinger next overviewed varieties of CRT products.
19 He found "CRTs differed mainly by type of use, size, and display
20 resolution, though other characteristics, such as shape, sometimes
21 varied as well." Id. ¶ 11. Most CRTs sold during the Class Period
22 were able to display color images. While CDTs were used in
23 computer monitors and devices like ATMs to accommodate higher
24 resolution whereas CPTs were used in televisions to accommodate
25 brighter screen, the basic technology of CDTs and CPTs is the same.
26 Id. The quality of viewing a CRT device is determined by many
27 characteristics, most important of which are the screen size and
28 resolution. Id. ¶ 12. CPTs were most commonly made in 14, 20, 21,
 and 29 inches, which comprised about 79 percent of sales during the
 class period. CDTs were most commonly made in 14, 15, and 17
 inches, which comprised 91 percent of sales during the Class
 Period. Id.

1 Next, Dr. Lietzinger turned to the CRT Defendants and co-
2 conspirators. Id. ¶ 13-14. Of particular note, the first such
3 large multinational corporation (or their subsidiaries) listed is
4 Mitsubishi Entities, followed by various other co-conspirators
5 listed herein. Together, "[t]hese companies accounted for 85-100
6 percent of CDT sales and 70-80 percent of CPT sales during the
7 class period." Id. ¶ 13. Products were then sold to various
8 manufacturers or redistributors to sell to third parties, or else
9 used in-house in CRT products and sold to big-name retailors such
10 as Best Buy, Wal-Mart, et cetera. Id. ¶ 14.

11 Dr. Lietzinger then turned to tracing the history of CRTs.
12 The CRT industry steadily grew though the end of the twentieth
13 century, peaking in 1999 at a value of almost \$20 billion. Id. ¶
14 15. However, by the end of the class period, other display
15 technologies had supplanted CRTs, for reasons Dr. Leitzinger
16 examines, with notable shut-downs of CRT production by parent
17 companies from 2005 to 2008. Id. ¶ 16-18.

18 **b. Characteristics and Structural Factors**

19 Throughout his report, Dr. Leitzinger noted characteristics of
20 the conspiracy and (what the parties call) structural factors that
21 Dr. Leitzinger opines are evidence "indicative of anticompetitive
22 activity that is broad in scope and multi-faceted in the manner in
23 which it affects firm behavior," thus supporting his opinion that
24 "impact of the alleged conspiracy would be felt broadly by CRT
25 buyers." Id. ¶ 26. These characteristics and factors include:

26 (1) From 2000-2006, Defendants and co-conspirators
27 held close to 90 percent of the market, and 80-
28 100 percent of the industry's capacity. Id. ¶
20. If participants could collectively
coordinate pricing decisions their control over

1 industry output would translate into industry-wide price effects. Moreover, a high degree of
2 control would simplify coordination issues due to little outside competitive presence to exert
3 pressure on the alleged conspiracy's coordination efforts. Id. ¶ 21.

- 4
- 5 (2) The conspiracy was global, and conspirators were cognizant of regional price levels which they
6 adjusted to keep in line with their global pricing strategy. Prices in the United States tracked with those elsewhere in the world. Id. ¶ 58-59, Figures 12-13.
- 7
- 8 (3) The conspiracy, which included dealings with Mitsubishi and Thomson, was highly organized (per
9 the structure of the Glass Meetings, regional meetings) and ongoing for many years. The information and organization from this scope,
10 frequency, and depth of meetings suggests extensive communication and coordination regarding the participants' activities,
11 facilitating close alignment among participants with the goals of the alleged conspiracy and broad price impact. Id. ¶¶ 27-29, 31-34, 36.
- 12
- 13 (4) The conspiracy entered into and enforced restrictions on capacity and output, including allocation of market shares, price stabilization efforts, which facilitated close alignment among the participants with the goals of the conspiracy and would allow broad impact on prices. Id. ¶¶ 28-29, n. 55, 36-37. See also id. 38-42.
- 14
- 15 (5) Barriers to entry into the CRT market were high, including high market entry prices and substantial excess capacity. High barriers to entry promote widespread impact because they discourage new competition that could destabilize the conspiracy or create pockets of competitive pricing. Id. ¶¶ 60-63.
- 16
- 17 (6) Product differentiation among CRTs was limited to a relatively small number of major characteristics based on standardized product specifications. Combined with a structured pricing environment and the ability to produce different products, Dr. Leitzinger found both economic and documentary evidence showing the conspiracy would be expected to have influenced prices across the product spectrum. Price agreements for top selling CRTs in their base configuration would signal a corresponding set of prices for other configurations for the same and other CRTs. Id. ¶¶ 52-54.
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(7) Defendants were easily able to obtain a high level of information about their competitors, both publicly and as a result of the conspiracy. This allowed the conspirators to readily identify attainable prices while also monitoring and enforcing price-fixing activities. *Id.* ¶¶ 28-29, 36. See also *id.* ¶ 53.

(8) Dr. Leitzinger's staff assembled a data set from Glass Meeting documents which, despite certain gaps, allowed Dr. Leitzinger to find that targeted CRTs accounted for 90 percent of CPTs and 98 percent of CDTs. Id. ¶¶ 43-44. He opined that price targeting, if effective in influencing actual prices just for the targeted CRTs, would have directly impacted products accounting for approximately 94 percent of CRT shipments during the Class Period. Id. ¶ 44, Figure 7.

c. Statistical Analysis

12 Dr. Leitzinger also performed extensive statistical analyses,
13 which he opined shows classwide impact through common evidence and
14 methodologies. He analyzed pricing variation among CRT buyers over
15 the 104 quarter Class Period, performing a series of hedonic
16 regressions using a set of observable characteristics about CDTs
17 and CPTs: size, widescreen, ITC or bare,²⁹ transaction quantity,
18 and brand. Id. ¶¶ 22-25, Figure 5. This analysis showed that most
19 (96% for CPTs and 82% for CDTs) price variation among buyers is
20 attributable to those product characteristics. Id. ¶ 25. This
21 suggests that selective impacts were not the reason for observed
22 price variability.

23 Dr. Leitzinger later examined the effects of Defendants' price
24 targets on actual prices from the data set described earlier.
25 This included three (sets of) calculations. He first looked to see
26 whether target prices and actual prices moved together. On a range

²⁷ Integrated tube component (ITC) CRTs were sold with a deflection
²⁸ yoke, whereas those sold without a deflection yoke were called
"bare" CRTs.

1 of 0 to 1 (low-to-high), the correlation coefficient was 0.98,
2 indicating to Dr. Leitzinger that higher price targets were closely
3 associated with higher actual prices. Id. ¶ 47. Second, Dr.
4 Leitzinger analyzed the relationship between target prices and
5 transaction prices, including multiple relevant factors and data
6 drawn from regression models based on quarterly averages, actual
7 prices, product differences, and supply and demand factors likely
8 to have influenced prices -- represented separately for CDTs and
9 CPTs. He found a positive and 95% statistically significant
10 relationship between target prices and actual prices, separate and
11 apart from market factors. Id. ¶ 48, Figure 8. Third, Dr.
12 Leitzinger showed results of target price regressions estimated
13 separately for North-American sales and sales elsewhere. The
14 results showed with a high degree of statistical significance that
15 target prices developed pursuant to the conspiracy resulted in
16 higher CRT prices in both North America and the rest of the world.
17 Id. ¶ 49, Figure 9.

18 Dr. Leitzinger also considered impact on the CRT
19 configurations for which he was not able to find price targets (1.8
20 percent of CDT shipments and 9.8 percent of CPT shipments). He
21 examined qualitative evidence drawn from DPP's discovery efforts
22 crossed with economic theory. The qualitative evidence included an
23 analysis of how CPTs and CDTs were in some ways similar or
24 otherwise related. Id. ¶ 51-52.³⁰ Dr. Leitzinger expressly notes
25 that CPTs and CDTs were manufactured using the same basic
26 production process, that they could be (and were) produced on the
27

28

³⁰ The Court goes into detail here as this directly relates to several arguments made by Mitsubishi.

same production lines, and that product differentiation was largely a matter of size and performance metrics that each manufacturer was capable of producing. There were even standardized product specifications that all manufacturers used. Dr. Leitzinger also noted that production facilities often produced a mix of products configured for different applications, and production was so flexible configurations could be changed in some cases the same day to accommodate short term needs. Accordingly, price differences between CRTs of different characteristics that were not cost-related would be expected, as matter of economic theory, to favor more profitable configurations, pressuring the market to re-align prices accordingly. Therefore, Dr. Leitzinger concluded that prices across CRT configurations would be economically linked over time.³¹ Id. ¶ 51-52. He further concluded that, due to the structured pricing environment and the level of attention given to relationships between prices and demands of differing CRT products, the conspiracy would influence prices across the product spectrum. Id. ¶ 53-54.

Dr. Leitzinger also performed a correlation analysis of the prices over time for top-selling CDTs and CPTs, determining that all of these prices were highly correlated.³² Id. ¶ 55, Figure 10. He then performed a correlation analysis of targeted CRT products and non-targeted products, finding a clear correlation (correlation

³¹ Dr. Leitzinger cites as support documents which were largely provided (in whole or in excerpts) by the parties and which the Court has separately reviewed.

³² Dr. Leitzinger calculated his correlations using Fisher Matched-Model price indexes, which are designed to measure price changes in a group of products accounting for changes in the composition of sales among different products. Leitzinger Report n. 122. The plaintiffs' expert in TFT-LCDs also used matched model price-index analyses. See TFT-LCDs, 267 F.R.D. at 312.

1 coefficient often exceeding 0.8, which, weighted by sales dollars,
 2 averaged to a correlation coefficient of 0.93) across major
 3 products. Id. ¶ 57, Figure 11. Based on the qualitative and
 4 statistical evidence, Dr. Leitzinger concluded that price targeting
 5 would likely have impacted these other CRTs as well. Id. ¶ 50.

6 **d. Damages**

7 Dr. Leitzinger also examined overcharges that resulted from
 8 the conspiracy, including costs to both true direct purchasers and
 9 to indirect purchasers who are nonetheless part of the DPP class.

10 The first method used, a "before/after" analysis,³³ compares
 11 pricing during the period of the conspiracy to pricing before
 12 and/or afterwards. Id. ¶ 64. Dr. Leitzinger conducted a
 13 regression analysis of the relationship between CRT prices, market
 14 demand and supply variables, and the presence of the conspiracy to
 15 provide an estimate of the impact of the alleged conspiracy on
 16 prices while holding constant supply-demand effects. This "reduced
 17 form" model is widely used by economists. Id. ¶¶ 64-65.³⁴ Dr.
 18 Leitzinger found demand and supply factors explained almost all
 19 variability in CRT prices, and that there were positive and highly
 20 statistically significant coefficient variables for the conspiracy
 21 indicators. Together these indicate that the conspiracy elevated
 22 CRT prices independent of the demand and supply factors. Id. ¶ 70,
 23 Figure 14.³⁵ Dr. Leitzinger used that information from the

24 ³³ The difference between prices actually charged for CRTs during
 25 the Class Period and prices in a "but for" world is sometimes
 26 called the "usual measure" of damages. This is a common damages
 27 calculation method. See, e.g., TFT-LCDs, 267 F.R.D. at 312, n. 13.

28 ³⁴ Dr. Leitzinger also details the methodology used to determine
 29 the proper "before" and "after" periods and the inclusion of other
 30 related variables. Leitzinger Report, ¶¶ 66-69.

31 ³⁵ Dr. Leitzinger was able to run this analysis for all types of
 32 CRTs in a single data set. Dr. Leitzinger expressly noted there

1 regression models to show average actual prices of CDTs and CPTs
2 versus the prices as they are estimated but-for the conspiracy.
3 Id. ¶ 71, Figures 15-16. He concluded that the conspiracy effect
4 ranged from 0.1 percent to 10.5 percent for CDTs and from 0.2
5 percent to 8.3 percent for CPTs. Id. ¶ 72.

6 The second model used was a regression model examining the
7 statistical relationship between CRT prices and CRT product prices.
8 The CRT is the most costly input in CRT monitors and TVs,
9 accounting for "40 to 50 percent of the cost of manufacturing the
10 finished product and up to 70% of the cost materials." Id. ¶ 79.
11 Thus Dr. Leitzinger expected to see a correlation, based on his
12 review of economic academic theory and evidence in this case. See
13 id. ¶¶ 74-78. The method for this regression analysis was a
14 "reduced form" model similar to the one previously described, and
15 Dr. Leitzinger again listed and explained the variables he used.
16 Id. ¶¶ 79-80. He found that the coefficient indicates that
17 increases in CRT prices resulted in increases in finished product
18 prices both for CDTs and CPTs. Id. ¶ 81. For CPTs, a one percent
19 price increase was associated, on average, with a 0.78 percent
20 increase in the finished product, whereas for CDTs a one percent
21 ///
22 ///

23
24 was a "prospect that there are common elements in CRT pricing
25 across models for a given manufacturer in a given quarter, with
26 variability across models largely as the result of the differences
27 in configurations." Id. n. 158. He therefore used a method to
28 treat the experience across all models sold by a given manufacturer
in a given quarter in a single observation, resulting in more
conservative measures of statistical strength. Id. Careful review
of Figure 14 shows that the regression analysis accounted
separately for CDT and CPT conspiracy indicators and sales, though
the final observations and R-squared were joint.

1 increase was associated, on average, with a 0.72 percent increase
2 in the finished product price.³⁶ Id.

3 Using the overcharge estimates provided, Dr. Leitzinger
4 proposed that classwide overcharges could be calculated. He could
5 take the CRT sales data and calculate sales by Defendants and co-
6 conspirators to class members for each year, and then apply the
7 overcharge percentages for each type of CRT per year to get the
8 overcharge amount associated with each type of CRT each year. Id.

9 ¶ 82. In the same manner, he could compute the damages to
10 purchasers of CRT finished products. To do so, Dr. Leitzinger
11 would calculate the average annual dollar overcharge for a given
12 CRT and multiply it by the corresponding units of CRT finished
13 product sales for the class members. Adding totals across products
14 over time would yield the total damages. Id. ¶ 83.

15 **ii. Conspiracy**

16 DPPs allege that proof of the price-fixing scheme includes all
17 the underlying cause(s) of action. Thus, if required of them, each
18 class member would show that Defendants and their co-conspirators
19 organized, operated, and participated in a global price-fixing
20 scheme. The evidence would be the same for each, including the
21 number and frequency of Glass Meetings, documentary and testimony
22 evidence related thereto, and other efforts by employees to price-
23 fix. Mot. at 19-20. Mitsubishi does not challenge this prong.
24 Upon its own inquiry, the Court is satisfied that the quantity and
25 quality of the evidence supports by a preponderance of the evidence

26
27 ³⁶ Dr. Leitzinger gave a helpful illustration: "if a \$100 CPT
increased in price to \$101 (i.e. 1 percent), a \$200 TV containing
28 that tube would be expected to increase in price by \$1.56 (i.e.
0.78 percent of the \$200 finished product price)." Id. ¶ 81.

1 that there was a price-fixing scheme and its existence and
 2 operations would be a question common to all class members. Thus
 3 DPPs meet the conspiracy prong.

4 iii. Impact

5 For impact in an antitrust case, the Court must determine
 6 whether the DPPs have shown a reasonable method for determining, on
 7 a classwide basis, the alleged antitrust activity's impact on class
 8 members. See LCDs, 267 F.R.D. at 601; see also DRAM, 2006 U.S.
 9 Dist. LEXIS 39841 at *44-45, 2006 WL 1530166 at *9. This is a
 10 question of methodology, not merit. See DRAM, 2006 U.S. Dist.
 11 LEXIS 39841 at *44-48, 2006 WL 1530166 at *9. The DPPs must make
 12 an evidentiary case for predominance, which the Court must analyze
 13 rigorously, Comcast, 133 S. Ct. at 1431; Amgen, 133 S. Ct. at 1196;
 14 Dukes, 131 S. Ct. at 2551,³⁷ but the Court cannot undertake a full
 15 merits analysis at this point, and should avoid engaging in a
 16 battle of the experts. See Amgen, 133 S. Ct. at 1194-95; DRAM,
 17 2006 U.S. Dist. LEXIS 39841 at *45, 2006 WL 1530166 at *9.

18 DPPs suggest that the key question is whether plaintiffs have
 19 demonstrated that there is a way to prove a classwide measure of
 20 impact through generalized proof. See TFT-LCDs, 267 F.R.D. at 313;
 21 In re Online DVD Rental Antitrust Litig., No. M 09-2029 PJH, 2010
 22 U.S. Dist. LEXIS 138558, *62, 2010 WL 5396064, *10 (N.D. Cal. Dec.
 23, 2010) aff'd sub nom. In re Online DVD-Rental Antitrust Litig.,
 24 779 F.3d 934 (9th Cir. 2015). DPPs cite to three such offerings:

25 ³⁷ Due in part to these cases, the Court does not merely rely on
 26 its earlier decisions granting class certification within this case
 27 but undergoes a new analysis. Even so, in undergoing this new
 28 analysis, the Court is mindful of its earlier findings of impact
 and damages to IPPs, some of which required showings of impact and
 damages to DPPs. See Order of the Court dated September 24, 2013,
 ECF No. 1950.

1 contemporaneous evidence of classwide impact, statistical evidence
2 of classwide harm found by expert economist Dr. Leitzinger, and
3 classwide impact based on the structure of the CRT market given the
4 operation of the CRT conspiracy. Mot. at 21. Mitsubishi disputes
5 all three claims. First, Mitsubishi argues there is no classwide
6 proof of impact because the alleged "contemporaneous evidence" is
7 not common for all members as a result of the differences between
8 CDTs and CPTs. Second, Mitsubishi argues Dr. Leitzinger's
9 statistical evidence does not show any meaningful correlation
10 between CPT and CDT prices per commonality arguments made earlier,
11 and therefore lack predominance. Third, Mitsubishi attacks the
12 argument that classwide impact flows in part from the "structure of
13 the CRT market and the operation of the CRT conspiracy," noting
14 that such arguments fail where products do not have structural
15 factors that generate classwide impact. The Court disagrees with
16 Mitsubishi, and for the reasons below finds that DPPs have
17 adequately shown impact.

18 Mitsubishi argues there is no classwide proof of impact
19 because the alleged "contemporaneous evidence" is not common for
20 all members as a result of the differences between CDTs and CPTs.
21 Opp'n at 17. The Court agrees there may be real differences
22 between the products and the methodology required to prove the
23 specific, actual loss suffered due to the impact of the conspiracy
24 on each of the products. However, DPPs put forward evidence (as
25 reviewed by Dr. Leitzinger) suggesting that all but a small
26 fraction of the CRT market was impacted, that the conspiracy's
27 price goals were achieved a significant portion of the time, and
28 that conspirators were effective at monitoring and enforcing

1 conspiratorial agreements. See Mot. at 21-22. Given a conspiracy
2 of such magnitude, that was so successful, and was able to self-
3 enforce, the distinction between impact on the sub-markets of CDTs
4 and CPTs does not create individualized issues at a methodological
5 level sufficiently significant to overcome the fairness and
6 efficiency of addressing the two together. Moreover, the means of
7 proof required and the evidence expected to be presented at trial
8 will largely be the same for both products, with only minimally
9 differing documentation and associated numerical impact near the
10 end of the analysis.³⁸ Thus the Court finds the "contemporaneous
11 evidence" has the ability to show impact through common evidence
12 and methods.

13 Mitsubishi encourages the Court to consider Funeral Consumers
14 Alliance, Inc. v. Service Corp. Int'l ("Funeral Consumers"), 695
15 F.3d 330, 348-49 (5th Cir. 2012) for the proposition that
16 individualized issues predominate where "plaintiffs fail to explain
17 how statements made by one associate in one area of the country
18 equates to a nationwide conspiracy." However, a proper
19 understanding of Funeral Consumers is that in determining
20 predominance, individualized issues take on greater force where
21 there is no national market or nationwide conspiracy. Id. at 348.
22 Funeral Consumers focused on the inability of the plaintiffs to

23 ³⁸ Even if DPPs were forced into two separate classes -- one for
24 CPTs and one for CDTs -- the Court could easily envision a trial
25 strategy wherein DPPs, to maximize their claims for damages, in
26 each case attempt to introduce exactly the same evidence of CPT and
27 CDT damages to emphasize the degree of market control, the extent
28 of impact, and the pervasive nature of the conspiracy. The Court
is neither suggesting this strategy nor ruling upon its viability
under applicable evidence rules; rather, the intuitive appeal of
such a methodology underscores why there is such a strong trend to
finding predominance (and impact) in price-fixing cases upon proof
of just the conspiracy. See, e.g., Newport, 209 F.R.D. at 167.

1 establish a conspiracy, to show that the conspiracy was prevalent
2 (they owned less than 10% of funeral homes in the United States and
3 sold only 45% of caskets in the United States), or that it had
4 consistent effect, execution, or impact from state to state. Id.
5 348-49. Here, DPP's evidence shows and Dr. Leitzinger expressly
6 discussed how this conspiracy was global, controlling almost the
7 entire market internationally, with consistent price inflation
8 attributable directly to the conspiracy. This evidence defeats
9 both the limited purpose for which Mitsubishi cited Funeral
10 Consumers and Mitsubishi's more general concern that individualized
11 issues predominate (and thus preclude impact) in spite of proof
12 that there was such a pervasive, all inclusive conspiracy.

13 Next, Mitsubishi asserts Dr. Leitzinger's statistical evidence
14 does not show any meaningful correlation between CPT and CDT prices
15 per commonality arguments made earlier. The Court notes that the
16 very paragraph Mitsubishi's earlier commonality argument³⁹ cites
17 specifies that this conclusion is what is "expected as an economic
18 matter." Leitzinger Report, ¶ 52. Thus it appears Dr. Leitzinger
19 is applying an economic theory to facts to yield a specific
20 conclusion which may be accepted or rejected at trial. Mitsubishi
21 does not attack this at a methodological level but a factual one.
22 The attempt to use Dr. Leitzinger's own work against him, citing
23 how his own statistical analysis analyzes CPTs and CDTs separately,
24 does not rebut the application of economic theory. See Opp'n at
25 15. The Court does not doubt that there are differences between
26 CPTs and CDTs which Mitsubishi may be able to show at trial, as
27 addressed in connection with commonality. However, as a

28 ³⁹ Opp'n at 15-16.

1 methodological matter, Dr. Leitzinger's report included at least
2 one statistic potentially showing a correlation between CPTs and
3 CDTs,⁴⁰ whereas Mitsubishi did not submit any expert analysis
4 showing a lack thereof or showing why economic theory or statistics
5 could never support such a conclusion. Therefore, the Court sees
6 no methodological problem⁴¹ with Dr. Leitzinger applying his expert
7 knowledge of economics to anticipate a potential correlation,
8 especially when that correlation was supported by deposition
9 testimony he reviewed (and quoted) in direct connection with this
10 speculative conclusion. See Leitzinger Report, ¶ 53 (citing what
11 has been provided to the Court as DPP Ex. 31, 18-20 (labeled page
12 296-98)).

13 Mitsubishi then attacks the argument that classwide impact
14 flows in part from the "structure of the CRT market and the
15 operation of the CRT conspiracy," noting that such arguments fail
16 where products do not have structural factors that generate
17 classwide impact. In support, Mitsubishi primarily relies on In re
18 Graphics Processing Units Antitrust Litig. ("GPU"), 253 F.R.D. 478,
19 489, 491 (N.D. Cal. 2008). GPU dealt with a conspiracy to fix
20 prices of graphic processing units that were mounted on graphic
21 chips and cards, which were in turn used in game consoles, laptops,
22 mobile devices and other products. A very large percentage of
23 graphic cards and chips were individually customized for a
24 particular customer or application. The "overwhelming majority" of
25 wholesale purchases of hundreds of types of chips and cards were

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⁴⁰ Leitzinger Report, ¶ 55, Figure 10.

27 ⁴¹ While the Court may hesitate to find it sufficient if presented
28 as the sole methodology, here it is one of many that Dr. Leitzinger
employs. The Court does not opine on the accuracy of Dr.
Leitzinger's conclusion or whether it would prevail on the merits.

1 individually negotiated, the ultimate price depending on the
2 volume, market power of the purchaser, degree of customization, and
3 many other factors. Here, customization was far more limited,
4 there are far fewer types of CRT products at issue and wholesale
5 purchases were rarely negotiated individually. GPU also did not
6 include guilty pleas or ongoing criminal investigations (thus
7 lacking "extrinsic evidence of harm") and the products involved in
8 GPU were customized and not fungible. See LCDs, 267 F.R.D. at 605
9 (distinguishing GPU).⁴² Therefore, the Court finds Mitsubishi's
10 reliance on GPU unpersuasive.⁴³ Moreover, contrary to Mitsubishi's
11 claims, DPPs do not merely rely on vague structural factors but
12 provide expert analysis and statistical methodology to turn the raw
13 market data into a working formula for damage determinations while
14 discounting non-conspiracy factors which would otherwise cause
15 prices to fluctuate. The Court's review of structural factors
16 presented by Dr. Lietzinger shows, by a preponderance of the
17 evidence, that structural issues could be shown at trial to have
18 generated class impact.

19 Thus the Court finds DPPs have shown impact for predominance.

20 **iv. Damages**

21 The Court finds DPPs have sufficiently shown a methodology of
22 establishing damages. As a threshold matter, the Court has already
23 reached this conclusion as a necessary finding for certifying the
24 IPP class, wherein a pass-through theory required the Court to
25

26 ⁴² See also Report and Recommendation dated June 20, 2013, ECF No. 1743; Report and Recommendation dated June 20, 2013, ECF No. 1742.

27 ⁴³ Mitsubishi's reliance on Gitto/Global Corp. v. Rohm & Haas Co. (In re Plastics Additives Antitrust Litig.), No. 03-CV-2038, 2010 U.S. Dist. LEXIS 90135, *26, 2010 WL 3431837, *6-7 (E.D. Pa. Aug. 31, 2010) is similarly unavailing, for largely the same reasons.

1 directly consider and rule upon whether methodology had shown
2 damages for the DPPs (damages which in turn were then passed along
3 in whole or in part to the IPPs). The Court reaffirms its ruling,
4 adopts its former reasoning and that of the Interim Special Master
5 as presented in the related Report and Recommendation. See Order
6 of the Court dated September 24, 2013, ECF No. 1950; Report and
7 Recommendations dated June 20, 2013, ECF No. 1742. Even so, were
8 the Court to be addressing the matter here for the first time, the
9 Court would still find DPPs have provided a methodology sufficient
10 to establish damages.

11 Insofar as Mitsubishi's attack can be construed as a
12 methodological attack on using averages (which do not, by their
13 nature, account for the differences stressed by Mitsubishi), the
14 Court is still not convinced. As has been previously noted in this
15 case, attacking averaged data is a standard defense tactic in
16 antitrust cases, so it is unsurprising that courts have often
17 evaluated and approved the appropriate use of averages. See ECF
18 No. 1743 at 16. Further, the Ninth Circuit has recognized that the
19 use of aggregate data in regression analysis is often appropriate
20 "where [a] small sample size may distort the statistical analysis
21 and may render any findings not statistically probative." Paige v.
22 California, 291 F.3d 1141, 1148 (9th Cir. 2002) (amended). In such
23 a case, the use of "aggregate numbers" may "allow for a [more]
24 robust analysis and yield more reliable and more meaningful
25 statistical results." Ellis v. Costco Wholesale Corp., 285 F.R.D.
26 492, 523 (N.D.Cal.2012), appeal dismissed (Jan. 16, 2013). See
27 also In re High-Tech Emp. Antitrust Litig., 289 F.R.D. 555, 580
28 (N.D. Cal. 2013). The Court finds that the DPPs have presented a

1 functioning model tailored to the facts of the case, using
2 aggregate data to produce a coherent, efficient model based on the
3 available data, and avoiding the risk of using overly granular data
4 sets that would have produced unreliable or statistically
5 meaningless data. See id.

6 Primarily, however, Mitsubishi seems to present a more nuanced
7 argument that differences in the nature of the various class
8 members precludes common proof of damages. Yet "[t]he presence of
9 individualized damages cannot, by itself, defeat class
10 certification under Rule 23(b)(3)." Leyva v. Medline Indus., 716
11 F.3d 510, 514 (9th Cir. 2013). In Leyva, a district court abused
12 its discretion by denying class certification where the primary
13 differences among class members rested in damages for each person
14 in the 500 member class who was shortchanged in different amounts
15 by a company's rounding or bonus pay policies. Id. at 513. Here,
16 with likely far more class members, the only major differences
17 cited by Mitsubishi are those between the different types of
18 products purchased (CDTs vice CPTs, sizes, etc.). Opp'n at 20.
19 Some of these are the types of variances that Dr. Leitzinger's
20 analysis is able to largely discount as he shows a generalized
21 methodology showing the degree to which the conspiracy caused
22 common harm to all Plaintiffs. Where his formula cannot discount
23 the differences (as with CDTs and CPTs), Dr. Leitzinger is able to
24 slightly tweak the data or add a single extra calculation into the
25 same, existing regression model. This latter circumstance does not
26 mean damages are not commonly shown, only that there is some nuance
27 to the damages resulting from the same one global conspiracy proved
28 by common evidence and damages distributed by common regression

1 models. To separate each subgroup of damaged product purchasers
2 into separate classes would create more burden on the Court rather
3 than less, and would be the death knell of class actions which
4 Leyva seeks to avoid. Leyva, 716 F.3d at 514. Moreover, the Court
5 has already ruled, in accordance with Royal Printing, that DPPs are
6 permitted to sue for the entire overcharge, eliminating most if not
7 all individualized concerns. See Order of the Court dated November
8 29, 2012, ECF No. 1470 at 21.

9 To the extent that Mitsubishi relies on In re Rail Freight
10 Fuel Surcharge Antitrust Litigation, 725 F.3d 244 (D.C. Cir. 2013),
11 to support discounting Dr. Leitzinger's model and thus not certify
12 the class, the Court is not convinced. In Rail Freight, a group of
13 railway shippers sued four major freight railroads for imposing
14 rate-based fuel surcharges on shipments over their tracks, alleging
15 that the railroads had fixed surcharge prices. The plaintiffs
16 presented a model that attempted to account for the fact that
17 certain plaintiffs -- "legacy plaintiffs" -- paid rates under
18 contracts they entered with the railway companies years before the
19 class period. Id. at 252-53. Bizarrely, the plaintiffs' damages
20 model in that case returned the result that the legacy plaintiffs
21 had been injured by the alleged price-fixing, an obviously
22 erroneous outcome given that the prices they paid were fixed by
23 pre-conspiracy contracts. Id. The D.C. Circuit rightly vacated
24 the district court's class certification decision because the lower
25 court had certified the class where the damages model that was
26 inextricably linked to plaintiffs' argument for common proof was
27 obviously flawed. Id. at 253, 255. Here, the Court sees no such
28 glaring error, and Plaintiffs' statistics appear to be sound.

1 Mitsubishi failed to show how the model Dr. Leitzinger presented
2 exhibits false positives.

3 The Court also reviewed the "Expert Report of Dov Rothman,
4 Ph.D." ("Rothman Report") submitted by Mitsubishi.⁴⁴ While the
5 issues raised therein clearly relate to this case, the Court found
6 the document non-responsive to the report by Dr. Leitzinger,
7 rebutting the opinions of other experts whose testimony is not
8 presently before the Court. The Rothman Report's two principle
9 critiques are: (1) that plaintiffs' experts provide insufficient
10 economic basis for linking Mitsubishi to the CRT conspiracy; and
11 (2) that plaintiffs' experts presented no evidence that plaintiffs
12 paid overcharges on purchased of CRTs from Mitsubishi (vice any
13 other conspirator). Rothman Report ¶ 5.⁴⁵

14 Even had Dr. Rothman's report been directly responsive to Dr.
15 Leitzinger's latest report and even if both Dr. Rothman's concerns
16 remained valid, the Court is still not tasked with resolving
17 conflicts between opposing experts when evaluating predominance.
18 See Amgen, 133 S. Ct. at 1194-96; DRAM, 2006 U.S. Dist. LEXIS 39841
19 at *45, 2006 WL 1530166 at *9. In analyzing the arguments of DPPs,
20 Mitsubishi, and related experts of each, the Court reiterates that
21 its task at this stage is simple: it must determine whether the
22 DPPs have made a sufficient showing that the evidence they intend
23 to present concerning antitrust impact will be made using

24 ⁴⁴ ECF No. 3708-10 (filed under seal).

25 ⁴⁵ The Court will not address Dr. Rothman's critiques as applied to
other experts upon whom DPPs do not rely for this motion. Insofar
26 as Dr. Rothman's concerns might apply to Dr. Leitzinger's report,
the Court notes Dr. Leitzinger has cited a substantial amount of
evidence and economic theory to rebut both concerns -- possibly
27 after taking Dr. Rothman's critiques into account. However, the
Court need not and does not make a finding here for the reasons
28 that immediately follow.

1 generalized proof common to the class, and that these common issues
2 will predominate. DRAM, 2006 U.S. Dist. LEXIS 39841 at *44-45,
3 2006 WL 1530166 at *9; TFT-LCDs, 267 F.R.D. at 313. The Court only
4 analyzes questions of methodology at this point. Merits questions
5 are for the finder of fact.

6 The Court finds that the DPPs' presentation of their
7 methodology for determining antitrust damages on a classwide basis
8 is plausible. Dr. Leitzinger's report is supported by both
9 documentary facts and industry data, his approach to determining
10 whether Mitsubishi was part of the conspiracy or sold CRT products
11 in connection therewith is based on factual review of evidence
12 produced by DPPs in discovery, and his use of regression and
13 correlation analysis is well established as a means of providing
14 classwide proof of antitrust injury and damages. See, e.g., TFT-
15 LCDs, 267 F.R.D. at 313 (citing cases). Insofar as Mitsubishi
16 provides any expert analysis for the Court to consider, the issues
17 raised are not methodological challenges but rather merits-based
18 issues properly left for trial.

19 The Court is therefore satisfied that DPPs have shown by a
20 preponderance of the evidence that there is a viable methodology
21 DPPs could present at trial to show damages (irrespective of
22 whether such a methodology would ultimately succeed).

23 **v. Superiority**

24 As part of the predominance analysis, DPPs must also
25 demonstrate that a class action is "superior to other available
26 methods for fairly and efficiently adjudicating the controversy."
27 Rule 23(b)(3). DPPs do so demonstrate. See Mot. at 25.
28 Mitsubishi does not separately challenge the superiority of

1 proceeding as a class, and insofar as its arguments may be relevant
2 they have been addressed above.

3 Per Rule 23 and upon review of the evidence presented, the
4 Court finds: (1) that class members have an interest in ceding
5 individual control of the prosecution or defense of separate
6 actions; (2) the extent and nature of the litigation against
7 defendants is extensive beyond the means of most individual
8 plaintiffs; (3) concentrating the litigation in the particular
9 forum is desirable both to expedite review of claims and in
10 accordance with the direction of the Judicial Panel on
11 Multidistrict Litigation; and (4) the difficulties in managing a
12 class action will be relatively few, and certainly far fewer than
13 attempting to consider as individual cases the many claims that
14 would otherwise result from this litigation. See Rule 23(b)(3).
15 The Court also notes that continuing in the form of a class action
16 will promote judicial efficiency, is likely the only means of
17 recovery for many plaintiffs whose recovery would otherwise be too
18 low to justify the cost of individual litigation, and there seems
19 to be little disagreement among the proposed class regarding
20 whether class treatment would be beneficial. See Local Joint
21 Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands,
22 Inc., 244 F.3d 1152, 1163 (9th Cir. 2001); Valentino v. Carter-
23 Wallace, Inc., 97 F.3d 1227, 1234-35 (9th Cir. 1996); LCDs, 267
24 F.R.D. at 608 (quoting SRAM, 2008 U.S. Dist. LEXIS 107523 at *49,
25 2008 WL 447592 at *7) ("[i]n antitrust cases such as this, the
26 damages of individual direct purchasers are likely to be too small
27 to justify litigation, but a class action would offer those with
28 ///

1 small claims the opportunity for meaningful redress."). Therefore,
2 the superiority requirement is met.

3 Accordingly, the Court finds that DPPs have carried their
4 burden on predominance under Rule 23(b)(3).

5

6 **V. CONCLUSION**

7 Upon completion of a "rigorous analysis" of the required
8 elements of class certification, for good cause shown, the Court
9 finds that all the threshold and minimum requirements of Rule 23(a)
10 and 23(b)(3) have been met.

11 Therefore, the Court GRANTS the motion for class certification
12 as against remaining Defendant Mitsubishi. DPPs are ORDERED to
13 specifically identify the "afilliatte[s]" in the class definition
14 (and class notice) to enable the parties and class members to
15 better determine who is in the class. DPPs are also granted
16 discretionary leave to amend the underlying complaint within 30
17 days of the date of this Order for the single, limited purpose of
18 conforming its definition(s) of parties with the description of the
19 class as certified in this order.

20

21 IT IS SO ORDERED.

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23 Dated: July 8, 2015

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UNITED STATES DISTRICT JUDGE